

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 226 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

VALIULLA BROTHERS

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Appearance:

MR MIHIR JOSHI, Advocate for Petitioner  
MR R.K. PATEL with MR B.D. KARIA, Advocates  
for the Respondent.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

"Whether the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law in holding that the assessee is entitled to weighted deduction under Section 35B in respect of the following expenditure : (a) Marine Insurance Premium Rs. 34,948/-, (b) Steamer's freight Rs. 1,98,323/- and (c) Railway Freight Rs. 54,641/-?"

The relevant Assessment Year was 1976-77 in which the assessee filed a return on 5.7.1976, declaring the net income of Rs. 94,561/-. The assessee firm had claimed weighted deduction under Section 35B in respect of marine insurance premium, steamer freight and railway freight. The ITO held that the expenditure did not qualify for the purpose of weighted deduction under Section 35B(1)(b)(iii) of the Act. The appellate authority however, held that the assessee was entitled to such weighted deduction and the Tribunal confirmed that view. These deductions were claimed on the footing that the goods in respect of which this expenditure was incurred, were exported. Similar question came up for consideration before this Court in CIT Vs. M.M. Khambhatwala, reported in 198 ITR 144 and this Court construing the provisions of Section 35B(1) held that the expenditure on the carriage of goods to their destination outside India and on the insurance of goods while in transit, cannot be taken into account for the grant of weighted deduction. Even in the case of CIT Vs Parshuram Pottery Works Co.Ltd., reported in (1996) 131 CTR 548, this Court had held that the items of expenditure of insurance, railway freight and steamer freight were not covered by the provisions of Section 35B for weighted deduction. Following these decisions, we hold that the assessee was not entitled to weighted deduction on the expenditure incurred for marine insurance premium, steamer freight and railway freight and the Tribunal was therefore, in error in holding that the assessee was entitled to such weighted deduction under Section 35B. The question referred to this Court is therefore, answered accordingly in favour of the Revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

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\*/Mohandas